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No. 99-1864

Supreme Court, U.S.
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In the

Supreme Court of the United States

JAMES B. HUNT, JR., *et al.*,

Appellants,

v.

MARTIN CROMARTIE, *et al.*,

Appellees.

On Appeal from the United States District Court
Eastern District of North Carolina

REPLY BRIEF

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I. THE DISTRICT COURT IS OWED NO DEFERENCE WHEN IT ATTEMPTS TO SUBSTITUTE ITS POLITICAL JUDGMENT FOR THAT OF THE LEGISLATURE AND DISTORTS THE EVIDENTIARY RECORD.

A. Substitution of Political Judgment

The district court majority's attempt to substitute its political preferences for that of the North Carolina legislature is not an "alternative" view of the evidence to which deference is owed by this Court. The State's election procedures, including the allocation of power by redistricting, should not be subject to interference by the federal court except in "extreme instances of gerrymandering." *Miller v. Johnson*, 515 U.S. 900, 928-29 (1995). In this case, the majority has resolutely disregarded the political preferences of the State legislature and ignored the plenary evidence supporting its political explanation for Congressional District 12. The court's political predilection is aptly illustrated by a colloquy between the judges and plaintiffs' expert Dr. Weber, in which they opined that if a legislator was being purely partisan, that legislator would not want to waste votes by making District 12 overly Democratic.[1] On cross-examination, Dr. Weber

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[1] Q. When you say "votes being wasted," what do you mean?
A. The sense is when you are doing districts and you have certain kinds of outcomes in mind and you have adjacent districts that are different in political composition, you might want to take some of the voters in the district that you are drawing that's overly safe and put them into adjacent district so as to make that district more competitive.
Judge Boyle: Like handicapping a race. You want to get your horses to the finish line ahead of all the other horses. (cont'd)

continued to opine that from a political scientist's perspective, it did not make sense to create one set of safe districts for one party and another for another party because it discourages the voter from having a choice in elections; he conceded, however, that "[n]o, I never met a politician who would admit their district was too safe." Tr. T. p. 265.

The district court majority's insistence that more of District 12's Democratic voters should have been shared with District 8, ignores the political dynamics which existed in the

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The Witness: Yes, constitutionalbut do it in a way you have voters not wasted.

Judge Boyle: So you are saying rather than handicapping it, they are making some sure things.

The Witness: My sense is District 12 is a sure thing. Again, in the challenged plan.

Judge Voorhees: If a legislator were being purely partisian [*sic*], that legislator would want the optimum 60 percent in a particular district and save the overage to help his party in another district?

The Witness: Yes. The district that might have benefitted from that, with the hindsight from the '98 election, would have been District Eight, in which there was an open seat and there was a seat that initially was a Democratic seat, but it turned over to be Republican.

Judge Boyle: If you add 20/20 hindsight, you wouldn't put so many voters that you were targeting in District 12. You might have thrown a few over to District Eight and won both elections rather than sacrificing District Eight and just winning District 12?

The Witness: Yes, Sir, that's exactly correct."

Tr. T. pp. 162-63. *See also*, J.S. at 116a-117a.

legislature.[2] The court's substitution of its political judgment for that of the legislature is reflected repeatedly in its opinion as it questioned the legislature's choices of which majority Democratic precincts (by registration) should have been included in District 12. *See e.g.* J.S. at 13a-14a, 17a, 25a. In selecting precincts in Mecklenburg, Forsyth and Guilford Counties it contends should have been included in District 12, the court fails to note which precincts actually placed in the district -- which overall have higher democratic registrations than the ones preferred by the court -- should have been *deleted* from the district to maintain one person, one vote requirements. It also ignores incumbency considerations in the surrounding districts and other traditional districting considerations, such as shape and municipal boundaries, all of which influenced the design of the district. *See* J.S. at 204a-205a, 207a-209a.

This Court has established a high bar for plaintiffs' burden of proof in a *Shaw* challenge, a function of this Court's traditional reluctance to interfere with the delicate and politically charged area of legislative redistricting -- a reluctance not shared by the district court majority below. "Election districting is a most difficult subject for legislatures, and so States must have discretion to exercise the political judgment necessary to balance competing interests." *Miller* at 915. *See id.* at 915-916 (In assessing the sufficiency of a *Shaw*

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[2]Senator Cooper explained in his testimony the legislature's political judgments in designing District 8 to accommodate its incumbent without disrupting the Democratic incumbents farther to the east or the Republican and Democratic incumbents to the west in Mecklenburg County. J.S. at 99a-100a, 117a-118a.

challenge to a district plan, the courts "must be sensitive to the complex interplay of forces that enter a legislature's redistricting calculus"). Because of the sensitive nature of redistricting, a "presumption of good faith" must be accorded to the State legislature's political judgments. *Id.* at 916.

It cannot be argued that the legislature's political judgments and the district court's political judgments constitute merely "two permissible views of the evidence" where "the fact finder's choice between them cannot be clearly erroneous." *See* Motion to Dismiss, or in the Alternative, to Affirm (hereafter "Mtn. Dis.") at 11 (citing *Anderson v. City of Bessemer*, 470 U.S. 564, 574 (1985)). The clearly erroneous test of Rule 52, F.R. Civ. P., "'does not inhibit an appellate court's power to correct errors of law, including those that may infect a so-called mixed finding of law and fact, or a finding of fact that is predicated on a misunderstanding of the governing rule of law.'" *Thornburg v. Gingles*, 478 U.S. 30, 79 (1986) (quoting *Bose Corp. v. Consumers Union of United States*, 466 U.S. 485, 501 (1984)). Because the majority opinion below is infected by political judgments constitutionally left to the State legislature, its mixed findings of law and fact are owed no deference and appellees' motion seeking summary dismissal of the State's appeal or affirmance of the judgment below should be denied.

B. Distortion of the Evidentiary Record.

In 1988, the district court majority wrongly high-jacked the State's congressional elections, requiring the State to hastily draw new districts and hold a truncated stand-alone September primary election with no run-off primary. No doubt embarrassed by this Court's unanimous reversal of its summary

judgment ruling, the majority's review of the evidence in this case was colored by its need to justify its earlier decision. Under these circumstances, the majority opinion does not represent simply an alternative "plausible" account of the evidentiary record which this Court may not reverse. *See* Mtn. Dis. at 11 (citing *Anderson*, 470 U.S. at 574.) Absent summary reversal, plenary review of the record in this case is required if the State's direct appeal from the lower court is to be meaningful. The district court's findings can be set aside based on its "misunderstanding of the governing rule of law," *Thornburg*, 478 U.S. at 79, or when "the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." *Anderson*, 470 U.S. at 573 (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

The State in its Jurisdictional Statement has provided examples of the majority's slanted and one-sided view of the evidentiary record, as has Judge Thornburg in his dissenting opinion. Other examples are highlighted by the appellees' arguments supporting the majority view. Appellees make the extraordinary statement that "the record is replete with indications that the State was attempting to keep the African-American percentage in the Twelfth District close to, but not over, 50%." Mtn. Dis. at 23. Plaintiffs and the lower court must rely almost exclusively on the legislative floor debates to support this proposition, since the extrinsic evidence in the record fully supports Senator Cooper's explanation of the decision process which resulted in adding loyal Guilford County Democrats, many of whom are African-American, to District 12, and thereby increasing the percentage of African-

Americans in the district to 46%.[3] *See* J.S. at 7 n 10. The Court has unfairly twisted Senator Cooper's logical argument that the district's non-majority-minority status has some probative value, into a cynical attempt by the legislature to deliberately maintain the district's minority population just below 50%. A fair reading of the Senator's argument, in context, fully supports his testimony. *See* Reply App. at 7ra-11ra. No evasiveness or lack of candor, as suggested by appellees, Mtn. Dis. at 25 n.34, can be found in the testimony of Senator Cooper which can justify the court's failure to give it credence. *See* J.S. at 104a-107a, 121a-125a, 127a-129a, 135a-136a.

Similarly, the Senate Committee hearing transcript with Senator Cooper speaking in favor of the plan is consistent with his later affidavits and testimony. *See* Reply App. at 1ra-5ra; *see also* J.S. at 103a-104a. He explained the political forces guiding the construction of the districting plan, including the importance of preserving the "basic core" of the Congressional districts. The court majority was apparently persuaded by appellees that this reflects a pernicious racial motivation. *See* Mtn. Dis. at 9 n.17. A fair reading of the Senator's full comments to the Senate Committee reveals no predominant racial considerations; instead, his comments reflect a sincere attempt to correct the constitutional infirmities of District 12 and the resulting major reconstruction of the district.

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[3] The majority opinion also extrapolates the Cohen e-mail discussion of racial percentages in District 1 into a "methodology for segregating voters by race" in District 12. J.S. at 27a. However, despite the close attention paid to racial percentages in District 1, the e-mail's brief reference to District 12 actually contains no mention of the racial percentage of District 12. *See* Mtn. Dis. at 7 n.11.

The majority opinion wrongly found District 12 to be racially tainted by a "lingering footprint" of the old district. *See* J.S. at 44a. This approach by the lower court, if allowed to stand, raises a troubling issue which is going to arise over and over again in the next round of districting as State legislatures make political and legal judgments on whether and how much federal law will permit them to preserve the "core" constituencies of incumbents who were originally elected from majority-minority districts drawn in the last decade. Preservation of "cores" of existing districts is a political "norm." *Id.* To equate this political reality with unconstitutional racial gerrymandering reflects a misunderstanding of the governing rule of law, which only this Court can correct. The lower court majority's failure to conduct the careful review of the evidentiary record required in redistricting cases, as well as its failure to give the State's evidence fair consideration, requires denial of appellees' motion to dismiss or affirm. A review of the entire record can only lead this Court to conclude that a mistake requiring reversal has been committed by the district court below.

II. REQUIRING NORTH CAROLINA TO HASTILY REDISTRICT AND RESTART ITS 2000 ELECTION PROCESS AT THIS LATE DATE IS INEQUITABLE.

Plaintiffs try to paint defendants as recalcitrant laggards whose alleged refusal to redistrict properly should bar any consideration of the equitable factors opposing the imposition of a new congressional redistricting plan in this year of the decennial census. In reality, the delay in resolving this litigation is attributable not to any "unclean" hands of defendants, but to the developing area of the law and to the trial court's

uncertainties about its application. This case and its predecessor have been to this Court three previous times. The first time, defendants prevailed in the district court on a motion to dismiss, which was narrowly reversed by this Court, in a five to four decision, when it announced a new claim for racial gerrymandering in districting and apportionment litigation. *Shaw v. Reno*, 509 U.S. 630 (1993) ("*Shaw I*"). The second time, the district court sought to apply the unfamiliar teachings of *Shaw I* and upheld the 1992 congressional plan's District 12 on a two to one vote. That decision was reversed, again by a narrow five to four majority, in *Shaw v. Hunt*, 517 U.S. 899 (1996) ("*Shaw II*"). The third appeal resulted from the district court's split decision to grant summary judgment to plaintiffs holding that District 12 in the 1997 Plan was unconstitutional. That decision was reversed unanimously by this Court in *Hunt v. Cromartie*, 526 U.S. 541, 119 S. Ct. 1545 (1999). Thus, what the defendants must do to meet constitutional requirements in this developing area of the law has not been evident to the courts: the district courts have split in each of this decade's three decisions involving North Carolina's congressional redistricting plan; this Court reversed the district court by a bare majority in both *Shaw* cases.

For plaintiffs to suggest defendants have refused to follow clear constitutional mandates insults the district court judges and members of this Court who have struggled to resolve North Carolina's congressional districting litigation. Plaintiffs seemingly seek to prejudice defendants in the eyes of this Court. They apparently do so solely to convince the Court that it should not take into consideration the fact that the district court has ordered a new plan after candidates have filed and

after campaigning has begun in a year in which the census is being compiled, despite the fact that whatever plan is used this year will most assuredly not be used for the 2002 congressional elections. Yet, courts have recognized repeatedly that the imminence of a new census, with a new districting process to follow, weighs equitably against requiring a new districting plan. Thus, in the 1990 decision of *White v. Daniel*, the Fourth Circuit Court of Appeals noted, "[A]ny reapportionment done now would use 1980 census figures, and such reapportionment might not provide fair and accurate representation for the citizens of the County."[4] 909 F.2d 99, 104. *See also Simkins v. Greshette*, 495 F. Supp. 1075, 1082 (D.S.C.), *aff'd* 631 F.2d 287 (4th Cir. 1980) (If reapportionment were ordered, "such [a] plan would, of necessity have its basis on the 1970 census figures, which are now ten years out of date. There is little likelihood that such a plan would provide fair representation for the people . . . ."); *Fouts v. Harris*, 88 F. Supp. 2d 1351, 1354 (S.D. Fla. 1999) (citing *White* as to unduly prejudicial nature of using 1990 census figures and for principle that two reapportionments so close together would be burdensome and would cause instability and dislocation in electoral system); *Maxwell v. Foster*, No. 98-1378, slip op. at 6-9 (W.D. La. Nov. 24, 1999) (also citing *White* for principle that two

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[4] Plaintiffs assert that defendants' counsel accused plaintiffs of laches during closing argument before the district court. Mtn. Dis. at 28 n.35. In fact, defendants' counsel tried to point out that cases dealing with laches also address principles relevant to this case -- that redistricting at the end of the decade may be equitably disfavored because of the confusion generated by repeatedly changing districts and because of inaccuracy of the data from the old census. Those principles apply as strongly here as in laches cases.

reapportionments in two years would be disruptive and burdensome). Three years ago, this Court observed that "equitable considerations disfavor requiring yet another reapportionment" when the census data on which the State would have to rely were more than six years old and thus no longer accurate. *Abrams v. Johnson*, 521 U.S. 74, 101 (1997). In the year 2000, with the census data ten years old and even less accurate, the "equitable considerations disfavor[ing] requiring yet another reapportionment," *id.*, militate even more strongly against the district court's decision requiring a new plan at this late date. To require yet another plan now would halt the electoral process long after it began, after the primaries have been held. It would require not only a different plan, with new candidate filings and new districts for candidates and voters to learn, but also a truncated election schedule. Such a schedule would be likely to duplicate the atrocious turnout of the 1998 elections held after the district court wrongly required the State to adopt a new plan based on its summary judgment order that this Court eventually reversed unanimously. This Court should not subject the people of North Carolina to such a confusing and constantly changing procedure for electing their congressional representatives. The district court's decision should be summarily reversed on the grounds that requiring a new congressional districting plan in 2000 is contrary to all sound equitable and remedial principles.

CONCLUSION

For the foregoing reasons, as well as those presented in the State's Jurisdictional Statement, this Court should deny Appellees' Motion to Dismiss, or in the Alternative, to Affirm.

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REPLY APPENDIX

Transcript of February 20, 1997 Meeting of Senate Committee on Congressional Redistricting, 97C-28F-4F(2) (Exhibit 100 excerpt) 1ra

Complete Text of Senate Floor Speech by Senator Roy Cooper: March 27, 1997, Floor Debate of HB 586, 97C-28F-4F(2) (Exhibit 100 excerpt) 7ra

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TRANSCRIPT OF FEBRUARY 20, 1997 MEETING OF SENATE COMMITTEE ON CONGRESSIONAL REDISTRICTING, 97C-28F-4F(2) (EXHIBIT 100 EXCERPT)

[**Senator Cooper**:] For the elections beginning in 1992, the General Assembly drew the current Congressional districts, which you see, some of the maps around have the current districts which are up there. The General Assembly first sent a plan to the Justice Department with one minority district in the northeast. That plan was rejected by the Justice Department with the instruction that another minority district was needed in the State of North Carolina. The result was the current plan that we have now. This is an overall recap of the current plan. Currently, we have 46 counties which are split, we have six counties which have three members of Congress, an issue that the Supreme Court found particularly problematic. We have several districts with clearly irregular shapes and we have a situation where over a 100 precincts are split. Although lower federal courts held this plan constitutional, the United States Supreme Court in a 5-4 decision declared specifically the 12th Congressional District to be unconstitutional. There are different interpretations of that decision and other decisions. The bottom line interpretation is that race cannot be the predominate factor in redistricting and that if race is used, districts must be reasonably compact. Of course, the standard of reasonably compact is open to interpretation. Quoting from the Court, the Court wrote that the standard is not the least possible amount of irregularity, but the districts must be reasonably compact and regular.

We had a challenge in trying to draw a plan and we have a challenge ahead of us. In seeking to draw a plan to present to this Committee, Plan A you have there, the following issues were considered. First, geographic fairness, second, reasonable compactness, third, communities of interest, fourth, racial fairness, five, reasonable political fairness, six, precinct boundaries, seven, county boundaries when reasonably possible, eight, the core geographic area of the current districts and their incumbents, ninth, the potential to achieve consensus within this chamber and within the House chamber and tenth, and probably most importantly, the constitutionality of the plan.

This plan took all of those factors into consideration. As a result, this plan is fair and workable. It will please everyone somewhat and no one completely. This is an overall description of the plan: First, it reduces from 46 to 24 the number of counties which are split into two Congressional districts. There are 24 counties that are split, bringing it down from 46, cutting the number almost in half. It reduces from 6 to 0 the number of counties which have three members of Congress. As I said earlier, the Court had problems with this. Under the prior plan we had six counties with three members of Congress and now we have none. It uses as a foundation the basic core of the existing Congressional districts. No district is dramatically changed and most of the districts, if not all of the districts have become more compact. I want to go over a brief description - and you have it in your package - but a brief description of the plan as follows: Here is the first district - as you can tell from this plan, the first district went way down into

what is currently the 3rd, the 7th and the 2nd and intentionally sought out minority population. This district is now much more compact and it contains 50.11% minority overall population. The 2nd district is here, in the green striped, it has the basic core of the current 2nd district. The 3rd district is a local district, basically as it was before. You have to have a lot of land mass when you are in the 3rd district to get 552,000 people, but that is out here. The 4th district is pretty much the Research Triangle Park. It covers all of that area with Orange, Durham County wholly in the 4th district and part of Wake County. The 5th district along this part of the state, is relatively unchanged. The 6th district here, there is not a whole lot of change to that in the Guilford County area. The 7th district down here is relatively unchanged. It moves north a little bit and one of the reasons for that is that - the main reason for that is that the 1st district had a lot of area in this - down here at the bottom of the southeast and so you had to come a little bit north to get the population. The 8th district here is relatively unchanged. I know there a few changes, but when you make changes in one district, you pretty much have to make changes in all the areas. The 9th district here . . . relatively unchanged. The 10th district here, relatively unchanged. The 11th district - much more compact. You can see it is somewhat jagged here. We used county lines to make the 11th district compact. And here the 12th district from Greensboro to Mecklenburg.

Let me talk just a little bit about the 12th district because that was the district which was held to be unconstitutional by the Court. In Congressional Plan A, I believe the 12th district is constitutional as drawn and I will tell you why. First it is much

more compact. It is 67% shorter in length than the current district. You can drive it in about 2 hours - from Greensboro to Charlotte.

Senator Winner: An hour and a half

Senator Cooper: An hour and a half - well I was thinking the very southern end of Mecklenburg. Let's go back and look at the *Insider* again and check on Senator Winner. (laughter)

Senator Cooper: It is the third shortest district in the state - the only districts which are shorter in length are the 4th and the 10th. It covers 6 counties instead of the 10 counties that it covered in the past. It connects the metropolitan areas of Charlotte and the metropolitan area of the Triad. It is much wider. One of the main problems the Court had with the 12th district was that it went long stretches with not covering any people at all.
. . . just go down the highway and not have anybody and just have a thin point of continuity along the Interstate. Here in every place but one, the district is 2 precincts wide, at least and much more - much wider in other areas. Only one area is one precinct wide and that is a very wide precinct. It takes into consideration the incumbent and the overall political balance. It is 47.09% minority, it is not a majority/minority district, but it is a minority influenced district.

Members of the Committee, I believe that this is a fair plan. You know - there will be questions about the partisan issue. I am no fortune teller. We have some results from 1988 and 1990 races that are in the computer. We are now dealing with

7 years later. It is very difficult to tell. I believe that all 12 of the incumbents would have an excellent opportunity to win each one of these districts. We are not drawing the districts for incumbents. We are trying to draw a plan that will get 26 votes in the Senate and 61 votes in the House. And I believe that we have a plan that all 12 of the incumbents should be able to live with because we have not dramatically altered the geographic nature of their districts.

What I want to do now is open the floor for questions from the Committee and questions, comments - I shared with you previously, most of you on the Committee the Plan and I want to open the floor up for questions or discussion at this time.

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COMPLETE TEXT OF SENATE FLOOR SPEECH BY SENATOR ROY COOPER: MARCH 27, 1997, FLOOR DEBATE OF HB 586, 97C-28F-4F(2) (EXHIBIT 100 EXCERPT)

Reading Clerk: **H.B. 586,** A BILL TO BE ENTITLED AN ACT TO DIVIDE NORTH CAROLINA INTO TWELVE CONGRESSIONAL DISTRICTS, reported favorably.

President: Senator Cooper is recognized to explain the bill.

Senator Cooper: Thank you, Mr. President, members of the Senate. Today we have a congressional redistricting plan that splits forty-six (46) counties, that has six (6) counties which have three members of Congress, and which splits over eight [sic] (80) precincts. The plan we have today has some social merit. As a result of this plan, for the first time in many, many years, we have two minority members of Congress as a result of the current plan. However, we have a plan that is a geographic mess. I have, for your viewing pleasure if you want to call it that, had placed on your desks a copy of the current map so that you can see how difficult it is for people to know in which Congressional district they reside. Last year, the United States Supreme Court ordered the Legislature to redraw the map as a result of the 12th Congressional District being declared unconstitutional. Now there are arguments for and against this decision. In fact, the Court found it close. It was a 5-4 decision and one of those Justices sort of wavered back and forth - Justice O'Connor. But the result was that the 12th District was held unconstitutional by a 5-4 decision and we were ordered by April 1 to come up with a new map. When this process began, we had a House controlled by the

Republican Party and a Senate controlled by the Democratic Party and people were saying that it couldn't be done, that we could not reach an agreement. In fact, other states which had been ordered by the Court to redraw their plans under similar circumstances, other states have been unable to agree on a plan. I want to commend all of those who have been involved in this process because we have agreed on a plan - a plan that is fair and workable. You have the plan on your desk, it is entitled "97 House/Senate Plan A." This plan reduces the number of counties that are split from forty-five (45) [sic] to twenty-two (22). There are now only 22 counties split under this plan. It reduces the number of precincts split from over eighty (80) to two (2) and those two precincts have special circumstances with satellite annexations, etc. and are split under most other plans as well. You have a plan which provides for geographic compactness, provides for consideration of community of interest, and provides for fair partisan balance. I think that all of the congressional districts would be competitive. However, it is likely that, if political fortunes remain the same, that we would end up with a plan that would elect six Democrats and six Republicans. We said from the beginning in the Senate that in 1996 the people made a decision to elect six members of Congress from the Democratic Party and six members of Congress from the Republican Party and we should not use court-ordered redistricting to alter that result. Therefore, we've come up with the plan that you see before you. In considering the plan, we looked at community of interest, looking at keeping precincts whole, at keeping counties whole as much as possible. We looked at making sure that no counties had more than two members of Congress representing the county. We

looked at racial fairness. Let me tell you a little bit about the 1st and the 12th Districts because the unconstitutionality of the 12th District is the reason why we are here. You have the statistics on your desk, but the 1st District is majority minority, total population 50.27%. However, let me emphasize that race was not the predominate factor in drawing the 1st Congressional District. We have a district that has ten whole counties and ten split counties. It's a district which respects the rural agrarian nature of the northeast. It is a district which, I believe, that a minority member of Congress or even a minority challenger would have an excellent chance to be re-elected, but I believe the 1st District not only is constitutional, but also complies with the Voting Rights Act which is also a responsibility we have with this plan to have it pre-cleared by the Justice Department and held constitutional by the Courts. The 12th District is almost 47% majority minority. Currently, the 12th District under our current plan is majority minority. I believe that this new 12th district is constitutional for several reasons. First, and maybe most importantly, when the Court struck down the 12th District it was because the 12th District was majority minority and it said that you cannot use race as the predominate factor in drawing the districts. Well guess what! The 12th District, under this plan, is not majority minority. Therefore, it is my opinion and the opinion of many lawyers that the test outlined in Shaw vs. Hunt will not even be triggered because it is not a majority minority district and you won't even look at the shape of the district in considering whether it is constitutional. That makes an eminent amount of sense because what is the cut-off point for when you have the trigger of when a district looks ugly. I think that the court will not even use the shape test, if

you will, on the 12th District because it is not majority minority. It is strong minority influence, and I believe that a minority would have an excellent chance of being elected under the 12th District. If, however, the court decides that the test is triggered for some reason and that we should look at the criteria outlined in Shaw vs. Hunt, you need to look at what the, how we have improved the shape of the 12th District. First, it is much more compact. It is 67% shorter in length than under the old plan and you see how the old plan stretches from Gastonia to Durham. You can drive the length of this district in two hours. It is the third shortest district in the entire State. It covers six (6) counties instead of ten (10), it connects the metropolitan area of Charlotte and the metropolitan area of the Triad. There is certainly a community of interest along that corridor, economic, social, and otherwise. It is much wider and it takes into consideration the incumbent and political balance. For all of those reasons, I believe that the 12th District will be held constitutional. Members of the Senate, redistricting is a difficult process - I don't want this job again, but I believe that we have been able to overcome partisan politics and we have been able to reach a plan that is fair to the people of North Carolina, and fair to all involved. The House agrees. Yesterday, the House voted unanimously in favor of this plan - 87-30. Of those 87 members who voted "yes", 52 were Republicans and 35 were Democrats. That is a good strong bipartisan show of support for this plan. I believe that this plan is acceptable to all of the members of Congress. There are a couple who have stated objections about the way that some area had been moved around, but as far as the partisan nature of the districts is concerned, we have preserved the current partisan

nature of each of the districts and for that reason, I think that all of the incumbents are satisfied. And let me emphasize to you that this is not an incumbent protection plan. This is a plan that attempts to preserve the partisan nature of each of the twelve districts as they now exist. I believe that we've done that with this plan. Members of the Senate, I encourage you to vote for this plan. We have a responsibility as a legislature to draw a plan. It's easier politically to say "let the courts do it", but that's rolling the dice. Number one, you don't know what you are going to get and, number two, it is shirking our responsibility as representatives of the people to do what the Court has ordered us to do. We may not like everything about the plan, there are some parts of the plan that I wish I could change, but the process of negotiations require give and take. That's what has happened here. I think we have a result that is fair and equitable for all of the people of North Carolina and I encourage your "yes" vote. Thank you.